

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
directing RCI Broadband to show cause why it)	
should not be found to be in violation of the)	Case No. U-18329
Uniform Video Services Local Franchise Act,)	
2006 PA 480, MCL 484.3301 <i>et seq.</i>)	
_____)	

At the March 28, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

The Commission Staff (Staff) has determined that RCI Broadband (RCI) may be in violation of the Uniform Video Services Local Franchise Act, 2006 PA 480, MCL 484.3301 *et seq* (the Act). Specifically, the Staff reports that RCI has failed to provide information to the Commission required under MCL 484.3309(4) and 484.3312(2).

MCL 484.3309(1)-(4) provides as follows:

- (1) A video service provider shall not deny access to service to any group of potential residential subscribers because of the race or income of the residents in the local area in which the group resides.
- (2) It is a defense to an alleged violation of subsection (1) if the provider has met either of the following conditions:
 - (a) Within 3 years of the date it began providing video service under this act, at least 25% of households with access to the provider's video service are low-income households.

(b) Within 5 years of the date it began providing video service under this act and from that point forward, at least 30% of the households with access to the provider's video service are low-income households.

(3) If a video service provider is using telecommunication facilities to provide video services and has more than 1,000,000 telecommunication access lines in this state, the provider shall provide access to its video service to a number of households equal to at least 25% of the households in the provider's telecommunication service area in the state within 3 years of the date it began providing video service under this act and to a number not less than 50% of these households within 6 years. A video service provider is not required to meet the 50% requirement in this subsection until 2 years after at least 30% of the households with access to the provider's video service subscribe to the service for 6 consecutive months.

(4) Each provider shall file an annual report with the franchising entity and the commission regarding the progress that has been made toward compliance with subsections (2) and (3).

Thus, subsection (4) requires submission of an annual report to the Commission containing the specific information required under subsections (2) and (3). On October 11, 2016, the Staff notified RCI that the annual report would be due on October 25, 2016. The annual report was not submitted. Thereafter, the Staff sent emails to, and left voicemails for, RCI's designated contact person. On December 5, 2016, the Staff sent a Past Due Notice letter to RCI, Certified Mail – Return Receipt Requested. The return receipt was received but not the annual report. On February 3, 2017, the Staff sent a Final Past Due Notice letter to RCI, Certified Mail – Return Receipt Requested. The return receipt was again received, but not the annual report.

MCL 484.3312(2) provides:

(2) The commission shall file a report with the governor and legislature by February 1 of each year that shall include information on the status of competition for video services in this state and recommendations for any needed legislation. A video service provider shall submit to the commission any information requested by the commission necessary for the preparation of the annual report required under this subsection. The obligation of a video service provider under this subsection is limited to the submission of information generated or gathered in the normal course of business.

RCI failed to respond to the Commission's annual provider survey. On December 1, 2016, the Staff notified RCI that responses to the survey were due by December 16, 2016, and sent an additional reminder on December 15, 2016. Thereafter, the Staff attempted to contact RCI by email and phone to no avail. On February 3, 2017, the Staff sent a Final Past Due Notice letter to RCI, Certified Mail – Return Receipt Requested. The return receipt was received, but the survey response was not provided.

Therefore, the Commission finds that it should order RCI to show cause why it should not be found to be in violation of the above-described provisions of the Act. Toward that end, RCI is ordered to file a response in this docket by 5:00 p.m. on April 25, 2017. RCI's response shall be accompanied by prefiled direct testimony, exhibits, work papers, and affidavits supporting the veracity of its response prepared by a person or persons with actual knowledge of the circumstances.

RCI is also ordered to appear with counsel at a prehearing conference scheduled for 9:00 a.m. on May 26, 2017, before Administrative Law Judge Sharon L. Feldman (ALJ) at the Commission's offices, 7109 W. Saginaw Hwy., Lansing, Michigan, 48917. Any interested person may file a petition for leave to intervene by May 19, 2017. All further proceedings in this matter shall be scheduled by the ALJ.

THEREFORE, IT IS ORDERED that:

A. RCI Broadband shall file its response to the allegations set forth in this order to show cause and supporting documentation in this docket by 5:00 p.m. on April 25, 2017.

B. Petitions for leave to intervene in this matter shall be filed by May 19, 2017.

C. RCI Broadband shall appear with counsel at a pre-hearing conference scheduled for 9:00 a.m. on May 26, 2017, before Administrative Law Judge Sharon L. Feldman at the Commission's offices, 7109 W. Saginaw Hwy., Lansing, Michigan, 48917.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12). To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscdockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

By its action of March 28, 2017.

Norman J. Saari, Commissioner

Kavita Kale, Executive Secretary

Rachael A. Eubanks, Commissioner